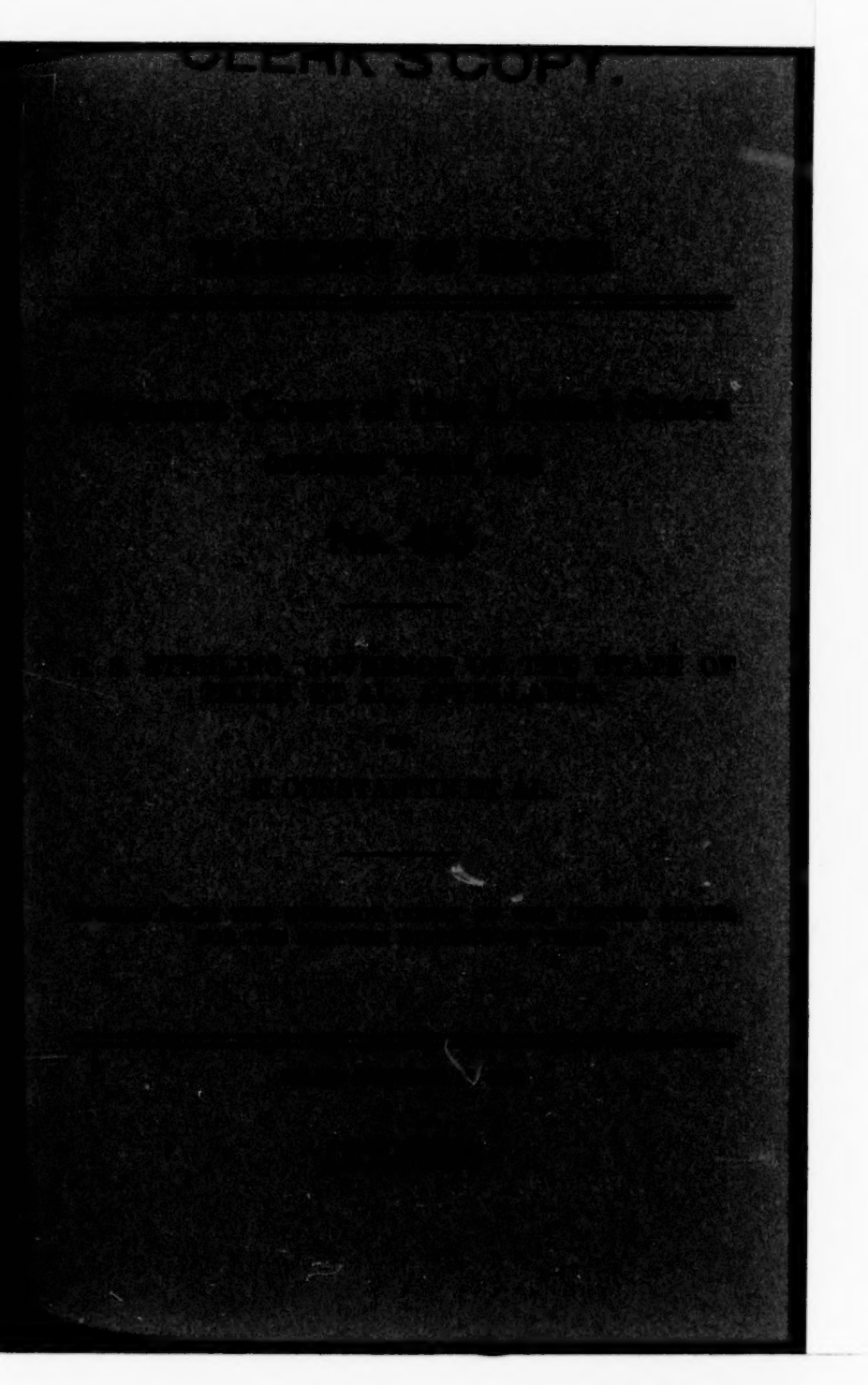

(37,150)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 453

R. S. STERLING, GOVERNOR OF THE STATE OF TEXAS ET AL., APPELLANTS,

vs.

E. CONSTANTIN ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 19, 1932

[fol. 1] CAPTION

Record of the proceedings of the three judge court, organized as provided by Section 266 of the Judicial Code (28 U. S. C. A. Sec. 380), of the District Court of the United States for the Eastern District of Texas, in the cause and matter hereinafter stated, the same being disposed of on the 21st day of September, A. D. 1932, at a term of said court held in the city of Houston, Texas, present the Honorable Joseph C. Hutcheson, Jr., United States Circuit Judge for the Fifth Circuit, United States District Judge Randolph Bryant, and United States District Judge W. I. Grubb.

[fol. 2]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION.

In Equity. No. 365

E. CONSTANTIN et al.

vs.

LON SMITH et al.

STIPULATION AS TO CONSOLIDATION, etc.—Filed May 30, 1932

The parties to the above entitled and numbered cause which has heretofore been heard on an application for an interlocutory injunction before a three judge Court, composed of the Honorable J. C. Hutcheson, Jr., Judge of the Circuit Court of the United States for the Fifth Circuit, and Honorables W. I. Grubb and Randolph Bryant, United States District Judges, and an interlocutory injunction granted against R. S. Sterling, Governor of Texas, W. W. Sterling, Adjutant General of Texas and Jacob F. Wolters, Brigadier General Texas National Guard, from which order granting such interlocutory injunction the defendants named have appealed to the Supreme Court of the United States; with the approval of the Court, make and enter into the following stipulation:

1. There shall be a severance of the plaintiffs' alleged causes of action; and the alleged cause of action against

[fol. 3] R. S. Sterling, Governor of Texas, W. W. Sterling, Adjutant General of Texas, and Jacob F. Wolters, Brigadier General Texas National Guard, shall be tried as against them separate and apart from the trial of the plaintiffs' alleged cause of action against all of the other defendants. The case shall proceed to trial on existing pleadings as against defendants R. S. Sterling, Governor of Texas, W. W. Sterling, Adjutant General of Texas, and Jacob F. Wolters, Brigadier General Texas National Guard, as though no other parties were named in said pleadings and a final judgment shall be entered as between plaintiffs and the said R. S. Sterling, Governor of Texas, W. W. Sterling, Adjutant General of Texas and Jacob F. Wolters, Brigadier General Texas National Guard; and said case may then proceed to trial and final judgment as between the plaintiffs and all other parties named, the same as though the said R. S. Sterling, W. W. Sterling and Jacob F. Wolters were not named as parties in said pleading. It is the intention of the parties that the plaintiffs' suit against the defendants named in this paragraph shall be treated as a separate suit from the plaintiffs' suit against all other defendants the same as though the suits had been separately filed. It is the further intention of the parties that separate final judgments shall be entered as between the plaintiffs and R. S. Sterling, Governor of Texas, W. W. Sterling, Adjutant General of Texas and Jacob F. Wolters, Brigadier General Texas National Guard and as between the plaintiffs and all other parties named as defendants in this suit, and that the respective parties to the separate judgments may appeal separately from the respective judgments when entered.

2. The case as against the defendants R. S. Sterling, Governor of Texas, W. W. Sterling, Adjutant General of Texas and Jacob F. Wolters, Brigadier General Texas National Guard, is submitted on its merits to the Court aforesaid and the same shall be decided on the existing [fol. 4] pleadings and on the record of evidence introduced at the trial upon the application for an interlocutory injunction; the court shall enter final judgment as between the plaintiffs and the defendants R. S. Sterling, Governor of Texas, W. W. Sterling, Adjutant General of Texas and Jacob F. Wolters, Brigadier General Texas National Guard, and either or all of said parties may prosecute an

appeal from said judgment when so entered, the same as though the only parties defendants named in this suit were the ones whose names are specifically mentioned in this paragraph.

3. In the trial of the plaintiffs' alleged cause of action against the defendants other than those specifically named in the preceding paragraph, the record of evidence introduced on the hearing of the application for interlocutory injunction in this case may be used for all purposes by either the plaintiffs or the remaining defendants.

4. Plaintiffs do not desire to urge, but waive all claims and alleged claims for damages pleaded or set forth in their pleadings in this case against R. S. Sterling, Governor of Texas, W. W. Sterling, Adjutant General of Texas and Jacob F. Wolters, Brigadier General Texas National Guard.

5. In any appeal from the final judgment as between the plaintiffs and the defendants specifically named in this stipulation, either or any of the parties to such final judgment so appealing may use the transcript of the record now on file in the office of the Clerk of the Supreme Court of the United States in cause No. 746, R. S. Sterling, Governor of the State of Texas, etc. et al., appellants vs. E. Constantin, et al., appellees, as the record on appeal from the final order entered as between the plaintiffs and the defendants herein specifically named; and the party or parties so appealing from such final order may, in addition to said record now on file in the office of the Clerk of the [fol. 5] Supreme Court of the United States take up as additional parts of said record this stipulation, the final judgment of the court, such bonds and other parts of the record as the appealing party may desire. It is further stipulated between the parties that the record now on file in the office of the Clerk of the Supreme Court of the United States in the above entitled and numbered cause, being the appeal from the order granting the interlocutory injunction, is a true and correct transcript of the record on the appeal from the order granting the interlocutory injunction.

6. It is stipulated between the plaintiffs and the other parties to this suit that any appeal from a final judgment as

between the plaintiffs and the defendants specifically named in this stipulation, that such appeal from such final order shall be consolidated in the Supreme Court of the United States with the appeal which has been taken and is now pending in the Supreme Court of the United States from the interlocutory injunction order heretofore granted.

Jos. W. Bailey, Jr., Luther Nickels, by J. W. B., Jr., Attorneys for Plaintiffs; James V. Allred, Attorney General of Texas, by Fred Upchurch, Assistant Attorney General of Texas, Attorneys for Defendants Other Than R. S. Sterling, W. W. Sterling, and Jacob F. Wolters. Dan Moody, E. F. Smith, Attorneys for Defendants R. S. Sterling, W. W. Sterling, and Jacob F. Wolters.

Approved.

J. C. Hutcheson, Jr., Judge Circuit Court United States for the Fifth Circuit. Randolph Bryant, District Judge. W. I. Grubb, District Judge.

[File endorsement omitted.]

[fol. 6] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO EVIDENCE TO BE INCLUDED IN THE RECORD—Filed Oct. 1, 1932

It is agreed by and between attorneys for Plaintiffs and attorneys for the Defendants, R. S. Sterling, Jacob F. Wolters, and W. W. Sterling, as follows:

1. In accordance with a stipulation between the parties filed in this cause at the time said cause came on for trial on its merits, it is here agreed and stipulated that the printed transcript of the record in this cause, now on appeal in the Supreme Court of the United States from the temporary injunction heretofore granted in this cause, being cause No. 746, R. S. Sterling, Governor of the State of Texas, et al, vs. E. Constantin, et al, on the docket of the Supreme Court of the United States, contains a true and correct statement

of all substantial and material evidence given on the hearing of this cause before the three-judge court constituted and organized as provided by Section 266 of the Judicial Code at the time this case was tried on its merits.

[fol. 7] 2. That all of the testimony included in the above mentioned statement of the evidence is necessary to a proper determination of this case on appeal.

3. In accordance with the stipulation and agreement filed in this cause at the time this cause was tried on its merits, it is here agreed that the transcript of the record of all pleadings and the evidence now on file in the Supreme Court of the United States on the appeal of the Defendants herein from the interlocutory injunction heretofore granted shall be and does constitute a full and complete record and transcript of all proceedings had, including pleadings and evidence, before the three-judge court at the time this cause was tried on its merits.

4. In accordance with the stipulation and agreement of the parties heretofore filed in this cause at the time this cause was tried on its merits, it is here stipulated and agreed that it shall not be necessary for Defendants to bring forward and file in the Supreme Court of the United States, in perfecting their appeal, a transcript of the pleadings and the evidence upon which this case was tried, for the reason that it is now on file in the Supreme Court of the United States on Defendants' appeal from the interlocutory injunction heretofore granted in this cause, being cause No. 746, R. S. Sterling, Governor of the State of Texas, et al, vs. E. Constantin, et al, on the docket of the Supreme Court of the United States; but that this appeal on the merits shall be consolidated with the Defendants' appeal from the temporary injunction, and the same transcript of record used on the consolidated appeal as is now on file on Defendants' appeal from said interlocutory injunction.

5. The stipulation and agreement between the parties filed in this cause at the time said cause was tried on its merits was approved by the court and each judge thereof, and in said stipulation and agreement it was expressly agreed that either or any of the parties to the final judgment entered in said cause who may appeal therefrom may use the transcript of record now on file in the office of the

Clerk of the Supreme Court of the United States in cause [fol. 8] No. 746, R. S. Sterling, Governor of the State of Texas, et al, Appellants, vs. E. Constantin, et al, Appellees, as the record on appeal from the final order entered as between Plaintiffs and Defendants herein specifically named. It is, therefore, agreed and stipulated that there is no necessity for the court approving for a second time the statement of facts in this cause, said statement of facts having been heretofore approved by the court; and, that therefore, there is no necessity for notice to Plaintiffs of lodgment and time and notice of place when Defendants will ask the court to approve the statement of facts in this cause; and if there should be any such necessity, then and in that event, Plaintiffs do hereby waive the issuance and service of notice of lodgment and time and notice of place when Defendants will ask the court to approve the statement of facts in this cause. And the respective parties, by their counsel, agree that the statement of facts as contained in the transcript of record hereinbefore mentioned and now on file with the Clerk of the Supreme Court of the United States is a true and correct statement of all substantial and material evidence given on a hearing of this cause, and that there is no necessity for the filing of said statement of facts with the Clerk of this court, and if there be such necessity, then the same is hereby in all things waived by both Plaintiffs and Defendants, it being expressly stipulated and agreed that the transcript of record, including the pleadings and the evidence, above mentioned and now on file with the Clerk of the Supreme Court of the United States, be and the same is hereby incorporated in the record for the purposes of appeal to the Supreme Court of the United States for all purposes, and that the same, taken together with the matters mentioned in the agreement as to documents which shall constitute the record on appeal filed herein, shall constitute [fol. 9] a full and complete record for the purposes of appeal to the Supreme Court of the United States.

Luther Nickels, Jos. W. Bailey, Jr., Attorneys for Plaintiffs. Dan Moody, E. F. Smith, Attorneys for Defendants, R. S. Sterling, Jacob F. Wolters, and W. W. Sterling.

The foregoing stipulation filed in the above entitled cause has been submitted to and examined by us, and we have

also examined the statement of the evidence as contained in the transcript of record now on file in the office of the Clerk of the Supreme Court of the United States in Cause No. 746, R. S. Sterling, Governor of the State of Texas, et al., Appellants, vs. E. Constantin, et al., Appellees; and said stipulation has been found by us to be in accordance with that certain stipulation and agreement filed by the parties in this cause at the time the same came on for hearing on its merits, and the statement of the evidence as contained in said printed transcript of record has been found by us to be correct, and is by us approved as contained all substantial and material portions of evidence given, heard and considered at the time the above entitled cause was tried on its merits before the three-judge court constituted and organized as provided by Section 266 of the Judicial Code.

Dated September 30th, 1932.

J. C. Hutcheson, Jr., U. S. Circuit Judge. W. I. Grubb, U. S. District Judge, by J. C. H., Jr. Randolph Bryant, U. S. District Judge, by J. C. H., Jr.

[File endorsement omitted.]

[fol. 10] In United States District Court for the Eastern District of Texas, Tyler Division

In Equity. No. 365.

E. Constantin et al.,

vs.

Lon Smith et al.

Judgment—Filed Oct. 1, 1932

On the nineteenth day of September, A. D. 1932, this suit came on to be heard on the merits of complainants' bill and prayer for permanent injunction and for final decree and judgment as between complainants and the respondents, R. S. Sterling, Governor of Texas; W. W. Sterling, Adjutant General of Texas; and Jacob F. Wolters, Brigadier General, Texas National Guard. By stipulation of parties

filed in this suit it was stipulated and agreed that complainants' cause of action as against the respondents, R. S. Sterling, Governor of Texas; W. W. Sterling, Adjutant General of Texas; and Jacob F. Wolters, Brigadier General Texas National Guard, should be tried separately and apart from the trial of complainants' alleged cause of action against all of the other respondents, and that the suit should proceed to trial and final judgment as between complainants and the respondents above named the same as though there were no other parties mentioned in the pleadings; and that either the complainants or the respondents above named, one or all, might appeal from such judgment. It was stated by complainants that they did not desire to urge, but waived all claims and alleged claims for damages pleaded or set forth in their pleadings in this suit against R. S. Sterling, Governor of Texas; W. W. Sterling, Adjutant General of Texas; and Jacob F. Wolters, Brigadier General, Texas National Guard; and it was thereupon [fol. 11] stipulated between the complainants and the respondents named that the complainants should waive, and the complainants did then waive and abandon all of their claims and alleged claims for damages against R. S. Sterling, Governor of Texas; W. W. Sterling, Adjutant General of Texas; and Jacob F. Wolters, Brigadier General, Texas National Guard.

It was further agreed and stipulated that this suit as between the complainants and the respondents, R. S. Sterling, Governor of Texas; W. W. Sterling, Adjutant General of Texas; and Jacob F. Wolters, Brigadier General, Texas National Guard, should be submitted on its merits and for final decree and judgment to the Court without a jury, and that the same should be submitted to the Court and decided by the Court on the existing pleadings and on the record of the evidence introduced at the hearing and trial of the complainants' application for an interlocutory injunction. It appeared to the Court that said stipulations and agreements were fair and necessary to a prompt trial of this suit on its merits and that the same were necessary in order that a final decree and judgment might be entered in this suit, and the same were sanctioned and approved by this Court.

The suit was so presented, submitted and heard by a statutory Court composed of three Judges, that is, The

Honorable Joseph C. Hutcheson, Jr., Circuit Judge in and for the Fifth District; The Honorable William I. Grubb, United States District Judge for the Northern District of Alabama; and The Honorable Randolph Bryant, United States District Judge for the Eastern District of Texas; and the Court, after hearing the pleadings, the evidence and argument of counsel, is of the opinion that the injunctive relief prayed for by complainants against the respondents R. S. Stering, Governor of Texas; W. W. Sterling, Adjutant General of Texas; and Jacob F. Wolters, Brigadier General, Texas National Guard, should be granted.

[fol. 12] It is accordingly, on this the nineteenth day of September, A. D., 1932, ordered, adjudged, and decreed by this Court that the respondents, R. S. Sterling, Governor of Texas; W. W. Sterling, Adjutant General General of Texas; and Jacob F. Wolters, Brigadier General, Texas National Guard, and all other persons acting for or with or under the direction of them, be, and they are hereby, permanently enjoined from enforcing against complainants any of their so-called military or executive orders, passed or to be passed, regulating or restricting the production of oil from the oil wells of complainants described in their bill of complaint, or from in any manner, directly or indirectly, interfering with the lawful production of oil from complainants' said oil wells.

The Clerk of the United States District Court for the Eastern District of Texas will issue writs in accordance with this decree.

It is further ordered, adjudged, and decreed in accordance with the stipulation hereinabove mentioned, that complainants recover nothing in the way of damages as against the said R. S. Sterling, W. W. Sterling, or Jacob F. Wolters, or either of them.

It is further ordered, adjudged, and decreed that complainants do have and recover of the last mentioned respondents their costs in this behalf incurred, for all of which writ of execution may issue.

J. C. Hutcheson, Jr., U. S. Circuit Judge. W. I. Grubb, U. S. District Judge. Randolph Bryant, U. S. District Judge.

O. K. Dan Moody.
O. K. Jos. W. Bailey, Jr.

[File endorsement omitted.]

[fol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed Oct. 1, 1932.

Your Petitioners, R. S. Sterling, Jacob F. Wolters, and W. W. Sterling, Defendants in the above entitled cause, respectfully represent and show that in said cause pending in the United States District Court for the Eastern District of Texas, Tyler Division, there was entered on the 19th day of September, 1932, a decree, judgment or order, final in its nature, granting Plaintiffs a permanent injunction as prayed for in their complaint in said suit as against these Defendants. Said cause was heard and determined on its merits by a three-judgment court, in accordance with the provisions of Section 266 of the Judicial Code. Your Petitioners, conceiving themselves aggrieved, injured and prejudiced by said decree, order and judgment, which is believed by them to be erroneous and inequitable, hereby appeal from said decree, order or judgment to the Supreme Court of the United States, and they pray that their ap-
[fol. 14] peal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree, order or judgment was made, duly authenticated, may be sent to the Supreme Court of the United States, and the proper order touching the security required of your Petitioners be made.

And, now, at the time of the filing of this petition for appeal, your Petitioners file an Assignment of Errors setting up separately and particularly each error asserted and intended to be urged in the Supreme Court of the United States.

Wherefore said R. S. Sterling, Jacob F. Wolters and W. W. Sterling, Defendants and Appellants, pray that their appeal be allowed.

Dan Moody, E. F. Smith, Attorneys for R. S. Sterling, Jacob F. Wolters, and W. W. Sterling, Defendants and Appellants.

And now, to-wit, on the 30th day of September, 1932, at Tyler, it appearing to the court that the above named De-

fendants and Appellants have filed an Assignment of Errors and have filed a good and sufficient appeal bond in the required amount, which bond has this day been approved by us, it is ordered that the appeal prayed for in the foregoing petition be and the same is hereby allowed as therein prayed for.

J. C. Hutcheson, Jr., United States Circuit Judge.
W. I. Grubb, United States District Judge, by J. C. H., Jr.
Randolph Bryan, United States District Judge, by J. C. H., Jr.

[File endorsement omitted.]

[fols. 15-17] Bond on appeal for $1,000, approved and filed October 1, 1932, omitted in printing.

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Oct. 1, 1932

And, now, at the time of filing their petition for appeal, and the allowance thereof, come R. S. Sterling, Jacob F. Wolters and W. W. Sterling, three of the Defendants and Appellants, and make and file their Assignment of Errors as follows:

I

The court erred in finding that it had jurisdiction to hear, determine and grant the injunction against these Defendants, the Governor of Texas, the Commanding Officer of the military forces of the State of Texas, and the Adjutant General of the State of Texas.

[fol. 19] II

The court erred in finding that it had jurisdiction to inquire into and determine whether, as a matter of fact, an insurrection or riot, or imminent danger thereof, existed in the Counties of Gregg, Upshur, Rusk and Smith, in the

State of Texas, at a time when the Governor of Texas, in the exercise of his discretion and judgment, had determined that an insurrection and riot, or imminent danger thereof, did exist, and had by proclamation declared Martial Law, which was in force and effect at the time of the hearing and decision of this case, and which was declared for the purpose of suppressing and preventing insurrection and riot in said Counties of Gregg, Upshur, Rusk and Smith, in the State of Texas.

III

The court erred in finding that the evidence showed no insurrection or riot existed in the Counties of Gregg, Upshur, Rusk and Smith, in the State of Texas, on August 16, 1931, or on October 13, 1931, or at the time this cause was heard and decided by this court.

IV

The court erred in finding that there was no warrant in the evidence for the belief, on the part of the Defendants and Appellants, R. S. Sterling and Jacob F. Wolters, that there was imminent danger of insurrection or riot in the Counties of Gregg, Upshur, Rusk and Smith, in the State of Texas, on August 16, 1931, or on October 13, 1931, or at the time this case was heard and decided by this court.

V

The court erred in finding that the Defendant and Appellant, R. S. Sterling, as Governor of Texas, had ousted the Railroad Commission of the State of Texas from the exercise of its jurisdiction in the matter of enforcing the conservation laws of the State of Texas, as applied to the production of crude petroleum.

[fol. 20]

VI

The court erred in finding that the Defendant and Appellant, R. S. Sterling, as Governor of the State of Texas, had no authority under the Constitution and laws of the State of Texas to declare Martial Law.

VII

The court erred in finding that the restriction placed by the Governor upon the production of crude petroleum by

the Plaintiffs, during the existence of Martial Law under the Constitution and statutes of Texas, as a means of preventing and suppressing insurrection and riot, or imminent danger thereof, was a taking of the Plaintiffs' property or a trespass upon the property rights of the Plaintiffs, in violation of the 14th Amendment to the Constitution of the United States.

VIII

The court erred in finding that this suit, insofar as it is against these Defendants and Appellants in their official capacities, as Governor of the State of Texas, as Adjutant General of the State of Texas, and as Commanding Officer of the military forces during martial law, was not a suit against the State of Texas.

IX

The court erred in granting the injunction against these Defendants and Appellants, enjoining them, and each of them, in their official capacity, from interfering with the production of oil by Plaintiffs from land situated in the Counties of Gregg, Upshur, Rusk and Smith, in the State of Texas, at a time when, according to the judgment and discretion exercised by the Defendant and Appellant, R. S. Sterling as Governor of the State of Texas, there was insurrection, riot and tumult, and imminent danger thereof, in said counties, and at a time when by proclamation of the Governor martial law was being maintained and enforced in said counties.

X

The court erred in granting the injunction as against these Defendants and Appellants, and as against each of [fol. 21] them, because the judgment, order or decree of the court, granting such permanent injunction, is without support, either in the facts or by the law of this case.

XI

The court erred in holding that it had jurisdiction to review, inquire into, and control by injunction the means employed by the Defendant and Appellant, R. S. Sterling as Governor of Texas, under Martial Law, to suppress the insurrection and riot, and imminent danger thereof, found and declared by him to exist in his proclamation declaring

Martial Law, in the Counties of Gregg, Upshur, Rusk and Smith, in the State of Texas, and in substituting its judgment and discretion for that of the Governor of Texas in determining the means to be employed under Martial Law to suppress the riot and insurrection, and imminent danger thereof, found to exist in the proclamation declaring Martial Law.

XII

For which errors found in the record and because of each of them, the above named persons in their official capacities, Defendants in the trial court, now Appellants, pray for a reversal of the decree, judgment or order of the District Court of the United States for the Eastern District of Texas, which was entered in this cause, granting a permanent injunction against these Appellants upon the authority of a three-judge court constituted and organized as provided and authorized by Section 266 of the Judicial Code; and the Appellants pray for such other relief as they may be entitled to receive.

Dan Moody, E. F. Smith, Attorneys for R. S. Sterling, Jacob F. Wolters, and W. W. Sterling, Defendants and Appellants.

[File endorsement omitted.]

[fol. 22] IN UNITED STATES DISTRICT COURT

[Title omitted]

WAIVER OF CITATION—Filed Oct. 1, 1932

Defendants, R. S. Sterling, Jacob F. Wolters, and W. W. Sterling, having filed their Assignment of Errors, Petition for Appeal, and Appeal Bond, and having been allowed an appeal to review the above entitled cause in the Supreme Court of the United States, Plaintiffs in said cause, by their attorney, do hereby waive the issuance and service of citation herein, and said attorney does enter his appearance in the Supreme Court of the United States.

Dated this 30th day of September, 1932.

E. Constantin, J. D. Wrather, Plaintiffs, by Jos. W. Bailey, Jr., Their Attorney.

[File endorsement omitted.]

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREEMENT AS TO DOCUMENTS WHICH SHALL CONSTITUTE THE RECORD ON APPEAL—Filed Oct. 1, 1932

The parties hereto, waiving præcipe, have agreed that the following documents shall constitute the record on appeal from the permanent injunction granted in this cause against Defendants on the trial of said cause on its merits:

1. Each and every document, including the statement of facts, which appears in the printed transcript of the record now on file in the office of the Clerk of the Supreme Court of the United States in Cause No. 746, R. S. Sterling, Governor of the State of Texas, et al., Appellants, vs. E. Constantin et al., which printed transcript of record contains the following documents:

a. Plaintiffs' Original Bill.

b. Plaintiffs' First Amended Original Bill.

c. Plaintiffs' Supplemental Bill.

[fol. 24] d. Plaintiffs' First Supplemental Petition responding to matters and things stated and averred in the answer filed by the defendants.

e. Answer of the Defendants, R. S. Sterling, Jacob F. Wolters and W. W. Sterling, to the First Amended Original Petition and Bill of Complaint of Plaintiffs.

f. Answer of Defendants, C. V. Terrell, Lon A. Smith, and Pat M. Neff, to Plaintiffs' First Amended Original Petition and Bill of Complaint.

g. Amendment to Answers of defendants, R. S. Sterling, Jacob F. Wolters and W. W. Sterling.

h. Decree of the court granting interlocutory injunction.

i. Opinion of the court authorizing the granting of the interlocutory injunction.

j. Statement of evidence on appeal.

k. Assignment of Errors.

l. Petition for Appeal and allowance thereof.

m. Appeal Bond.

n. Motion of Defendants R. S. Sterling, Jacob F. Wolters and W. W. Sterling for stay of injunction pending appeal.

o. Agreement as to papers composing the record.
p. Waiver of citation on appeal.
q. Cost Bill.
r. Certificate of the Clerk.

2. Decree of the court granting permanent injunction.

3. Opinion of the court authorizing the granting of the permanent injunction.

4. Assignment of Errors.

5. Petition for Appeal and allowance thereof.

6. Appeal Bond.

7. Stipulation of the parties, approved by the court, agreeing that this appeal from the permanent injunction may be consolidated in the Supreme Court of the United States with Defendants' appeal from the interlocutory injunction in this cause, which latter mentioned appeal is [fol. 25] now pending in said the Supreme Court of the United States.

8. Stipulation as to evidence to be included in the record.

9. Agreement as to papers composing the record.

10. Waiver of Citation on appeal.

11. Cost Bill.

12. Certificate of the Clerk.

Dan Moody, E. F. Smith, Attorneys for Defendants and Appellants, R. S. Sterling, Jacob F. Wolters, and W. W. Sterling. Luther Nickels, Jos. W. Bailey, Jr., Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 26] In Supreme Court of the United States

[Title omitted]

Statement of Points Relied on by Appellants and Designation to Print Entire Record—Filed Oct. 17, 1932

The Appellants on this appeal will rely on the following points:

Point 1. It was an abuse of judicial discretion for the three-judge court, on the trial of this cause on its merits, to

grant a permanent injunction enjoining the Governor of the State of Texas, during the existence of insurrection and riot, and imminent danger thereof, in the East Texas oil field, from interfering with Appellees' production of oil from their oil wells, when the Governor had found and declared that during the emergency created by the riot and imminent danger thereof that it was necessary in order to suppress and prevent insurrection and riot, that production of oil be restricted from all wells in the East Texas field, including those of Appellees.

[fol. 27] Point 2. The court had no jurisdiction to review, inquire into and control by injunction the means employed by Appellant R. S. Sterling as Governor of Texas under Martial Law to suppress the insurrection and riot, and imminent danger thereof, found and declared by him to exist in his proclamation declaring Martial Law in the Counties of Gregg, Upshur, Rusk and Smith, in the State of Texas.

Point 3. The suit is against R. S. Sterling in his official capacity as Governor of the State of Texas, W. W. Sterling in his official capacity as Adjutant General of the State of Texas, and Jacob F. Wolters in his official capacity as Commanding Officer of the military forces in the field, and is for the purpose of restraining them from taking action found by the Governor to be necessary in order to suppress and prevent insurrection and riot, and is in fact and in law a suit against the State of Texas, without its consent, and in violation of the 11th Amendment to the Constitution of the United States.

Point 4. The evidence—and it is not controverted—establishes the fact of insurrection and riot, or at least imminent danger thereof.

We ask that the entire record be printed.

Dan Moody, E. F. Smith, Attorneys for Appellants.

We have on this the 26th day of September, 1932, mailed by Registered Mail from Austin, Texas, to Joseph W. Bailey, Jr., Esquire, Dallas, Texas, attorney of record for Appellees, a true and correct copy of the statement of points which will be relied upon by Appellants in this cause.

Dan Mood, E. F. Smith, Attorneys for Appellants.

[File endorsement omitted.]

[fols. 28 & 29] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 37,150. E. Texas D. C. U. S. Term No. 453. R. S. Sterling, Governor of the State of Texas, et al., appellants, vs. E. Constantin et al. Filed October 17, 1932. File No. 37,150.

(2583)